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U.S. DISTRICT COURT
DISTRICT OF MASS

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|-----------------|---|-------------------------------|
| ANTHONY LEO, |) | Civil Action No. 04-11006-JLT |
|) |) | |
| Petitioner |) |) |
|) |) |) |
| v. |) |) |
| COMMONWEALTH OF |) |) |
| MASSACHUSETTS , |) |) |
|) |) |) |
| Respondent |) |) |
|) |) |) |
| |) |) |

MOTION PURSUANT TO RULE 8 OF RULES GOVERNING
HABEAS CORPUS TO HOLD EVIDENTIARY HEARING

The petitioner, Anthony Leo, submits the following motion and memorandum of law, requesting this honorable court to hold an evidentiary hearing to resolve controverted factual questions and because the state courts factual determinations are not supported by and are unreasonable in light of the record as a whole.

ARGUMENT

Federal Courts accord a presumption of correctness to the factual determinations made by

the state courts unless one of the following 8 circumstances are found to exist,

- 1) Factual disputes were not resolved in state courts
 - 2) State fact-finding procedure not adequate for full and fair hearing
 - 3) Material facts not adequately developed at state hearing
 - 4) State courts lacked jurisdiction of sub. Matter
 - 5) State Court failed to appoint counsel to indigent for hearing
 - 6) Applicant did not receive a full, fair and adequate hearing
 - 7) Denied Due Process of Law
- 8) State Court record is not supported by factual evidence or not produced hereinafter to the federal court

See Miller v. Fenton 474 U.S. 104